SUMMARY:

Subject Courduff was exercising at the 24 Hours Fitness center in the City of Chino on January 17, 2012 at approximately 0615 hours, when he was confronted by Witness [redacted] an [redacted]. [redacted] saw Courduff use his cell phone to surreptitiously take photographs of a woman ([redacted]) who was using exercise equipment in close proximity to Courduff and [redacted]

Witness [redacted] said Courduff was kneeling on one knee while holding his watch in his left hand and his iPhone in his right hand. [redacted] said Courduff loudly stated, "My watch is broken, my watch is broken." [redacted] said he heard Courduff's statements about the watch even though he ([redacted] had headphones in his ears and he was listening to music.

[redacted] who stands 6'05" tall, said he was standing very near to where Courduff was kneeling and he could see the iPhone in Courduff's right hand, which was extended away from his body toward Ms. [redacted] He said Courduff rapidly snapped several photographs of Ms. [redacted] while she was standing about eight feet away from him. [redacted] said Courduff used the thumb of his right hand to activate the "actuator" on the camera to capture as many photos of Ms. [redacted] as possible. He said her back was turned and Courduff was taking pictures directly of her. Sutton said he had a clear view of the phone's viewfinder, and Ms. [redacted] image occupied most of the iPhone's screen as Courduff snapped the photos. [redacted] stated his belief that Courduff made the loud statements about his watch being broken to distract people from the fact that he was taking pictures of Ms. [redacted]

[redacted] said he approached Courduff and asked if he was taking pictures of Ms. [redacted] Courduff stated that he was taking photographs of her and he apologized. [redacted] said Courduff seemed to be caught off guard that someone would confront him, and he interpreted Courduff's statement to be a "consciousness of guilt."

Witness [redacted] said he saw Courduff delete 10-14 pictures of Ms. [redacted] and approximately 60 other pictures of women in gym settings. He said all of the women appeared to be working out in a gym, and they all appeared to be unsuspecting of having their photographs taken by Courduff. [redacted] saw Courduff delete pictures of approximately six State of California vehicle license plates. He said the photos were specifically of license plates and the license plates occupied the entire viewfinder of the phone. He also saw Courduff delete two nude pictures of himself that were on the phone, however, he was unsure if

the photos contained images of Courduff's genitals.

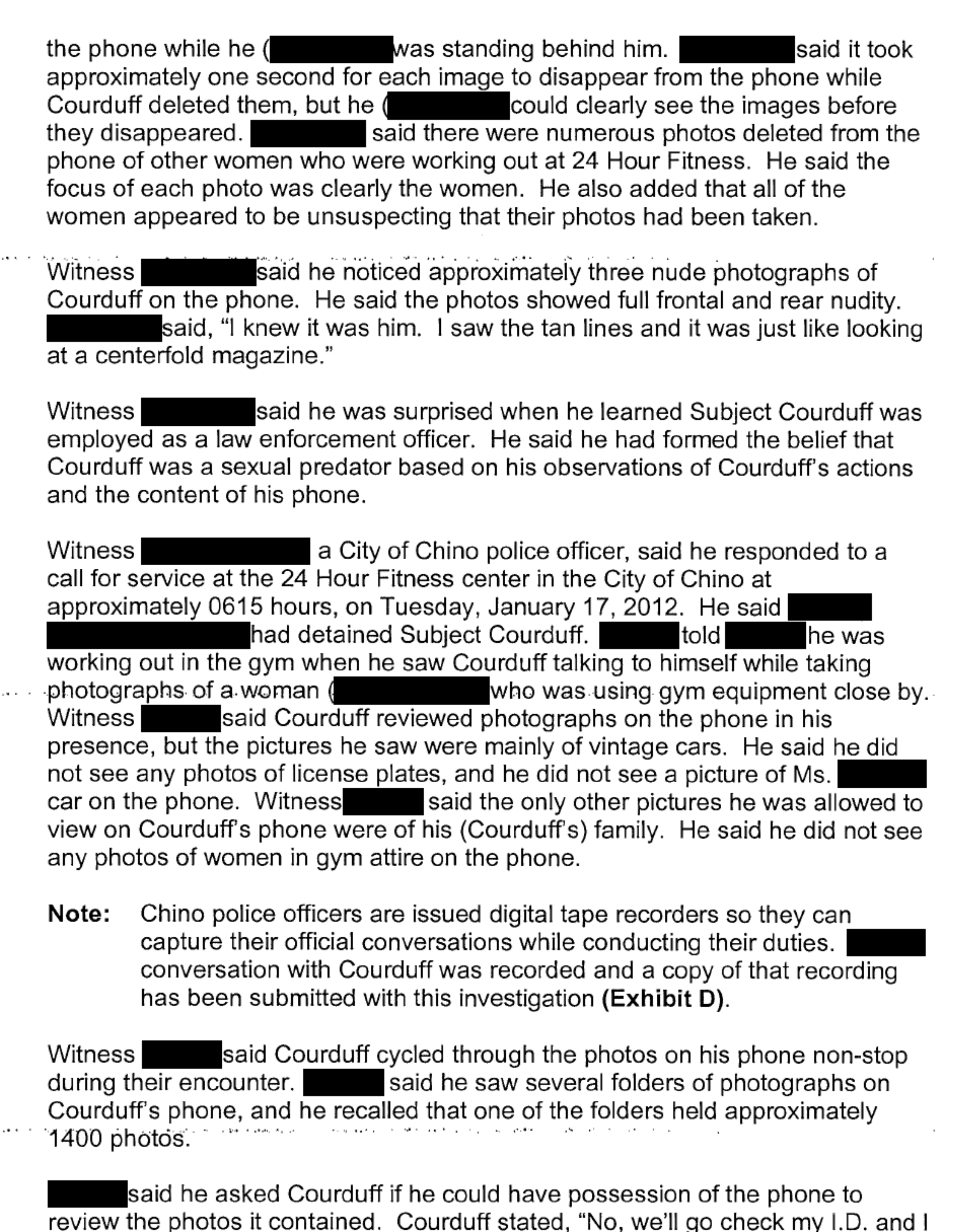
Witness [redacted] said he has been a police officer for seven years, and he has had training about sexual predators. He said he formed the opinion that Courduff might be a 290 registrant (convicted sex offender) or a sexual predator, who was possibly prepping himself to commit a more severe crime at a later date ([redacted]).

Witness [redacted] said he was exercising at the 24 Hour Fitness center in the City of Chino on January 17, 2012 at approximately 0615 hours, when his attention was drawn to a conversation between Witness [redacted] and Subject Courduff. [redacted], a retired [redacted], said he was standing approximately 15 feet from [redacted] and Courduff and he heard [redacted] "reprimanding" Courduff for using his cell phone to take pictures. [redacted] said he found out the pictures Courduff had taken were of his daughter, [redacted] while she had been using gym equipment a short distance away from Courduff and [redacted]

Witness [redacted] said he approached [redacted] and Courduff and identified himself as a [redacted]. He said Courduff was sitting on a bench and [redacted] was standing in front of Courduff. [redacted] said he stood directly behind Courduff, and he watched as Courduff scrolled through pictures on his phone. [redacted] said he noticed approximately four to five images of his daughter that had been taken while she was using a piece of gym equipment (cable crossover machine). [redacted] said he recognized his daughter in the photos, and the photos captured her wearing a pink top, black tights and pink tennis shoes, which was the exact outfit she had worn to the gym that morning. [redacted] said his daughter appeared to be unsuspecting that her photo had been taken.

Witness [redacted] said [redacted] told Courduff he should not take photos of people in the gym without their permission. He said Courduff immediately started deleting images from the phone of his daughter and of several California license plates. He said the images of license plates occupied the majority of the view finder on the phone. [redacted] said he became concerned that one of the license plates belonged to his daughter's car. He said the last several numbers on the plate looked familiar, and he could see that the plate was attached to a black car, which was the color of the car his daughter drove to the gym. He subsequently examined his daughter's car and determined the license plate he saw on the phone did not match his daughter's car.

Witness [redacted] said Courduff deleted approximately 70 to 100 images from



the phone while he ([redacted]was standing behind him. [redacted]said it took approximately one second for each image to disappear from the phone while Courduff deleted them, but he ([redacted]could clearly see the images before they disappeared. [redacted] said there were numerous photos deleted from the phone of other women who were working out at 24 Hour Fitness. He said the focus of each photo was clearly the women. He also added that all of the women appeared to be unsuspecting that their photos had been taken.

Witness [redacted]said he noticed approximately three nude photographs of Courduff on the phone. He said the photos showed full frontal and rear nudity. [redacted]said, "I knew it was him. I saw the tan lines and it was just like looking at a centerfold magazine."

Witness [redacted]said he was surprised when he learned Subject Courduff was employed as a law enforcement officer. He said he had formed the belief that Courduff was a sexual predator based on his observations of Courduff's actions and the content of his phone.

Witness [redacted] a City of Chino police officer, said he responded to a call for service at the 24 Hour Fitness center in the City of Chino at approximately 0615 hours, on Tuesday, January 17, 2012. He said [redacted] had detained Subject Courduff. [redacted]told [redacted]he was working out in the gym when he saw Courduff talking to himself while taking photographs of a woman ([redacted]who was using gym equipment close by. Witness [redacted]said Courduff reviewed photographs on the phone in his presence, but the pictures he saw were mainly of vintage cars. He said he did not see any photos of license plates, and he did not see a picture of Ms. [redacted] car on the phone. Witness[redacted] said the only other pictures he was allowed to view on Courduff's phone were of his (Courduff's) family. He said he did not see any photos of women in gym attire on the phone.

Note: Chino police officers are issued digital tape recorders so they can capture their official conversations while conducting their duties. [redacted] conversation with Courduff was recorded and a copy of that recording has been submitted with this investigation **(Exhibit D)**.

Witness [redacted]said Courduff cycled through the photos on his phone non-stop during their encounter. [redacted] said he saw several folders of photographs on Courduff's phone, and he recalled that one of the folders held approximately 1400 photos.

[redacted]said he asked Courduff if he could have possession of the phone to review the photos it contained. Courduff stated, "No, we'll go check my I.D. and I

guess I will have to call my watch sergeant and go from there."

[redacted] said Courduff held the phone and allowed him to view photos, but he did not believe Courduff allowed him to see all the photos that were on the phone. He said he did not seize the phone because he did not feel he had probable cause to believe a crime had been committed.

Witness [redacted] asked Courduff why he had taken photographs in the gym. Courduff replied, "I was taking pictures and sending some of them to my wife."

[redacted] asked, "Of the girls?"

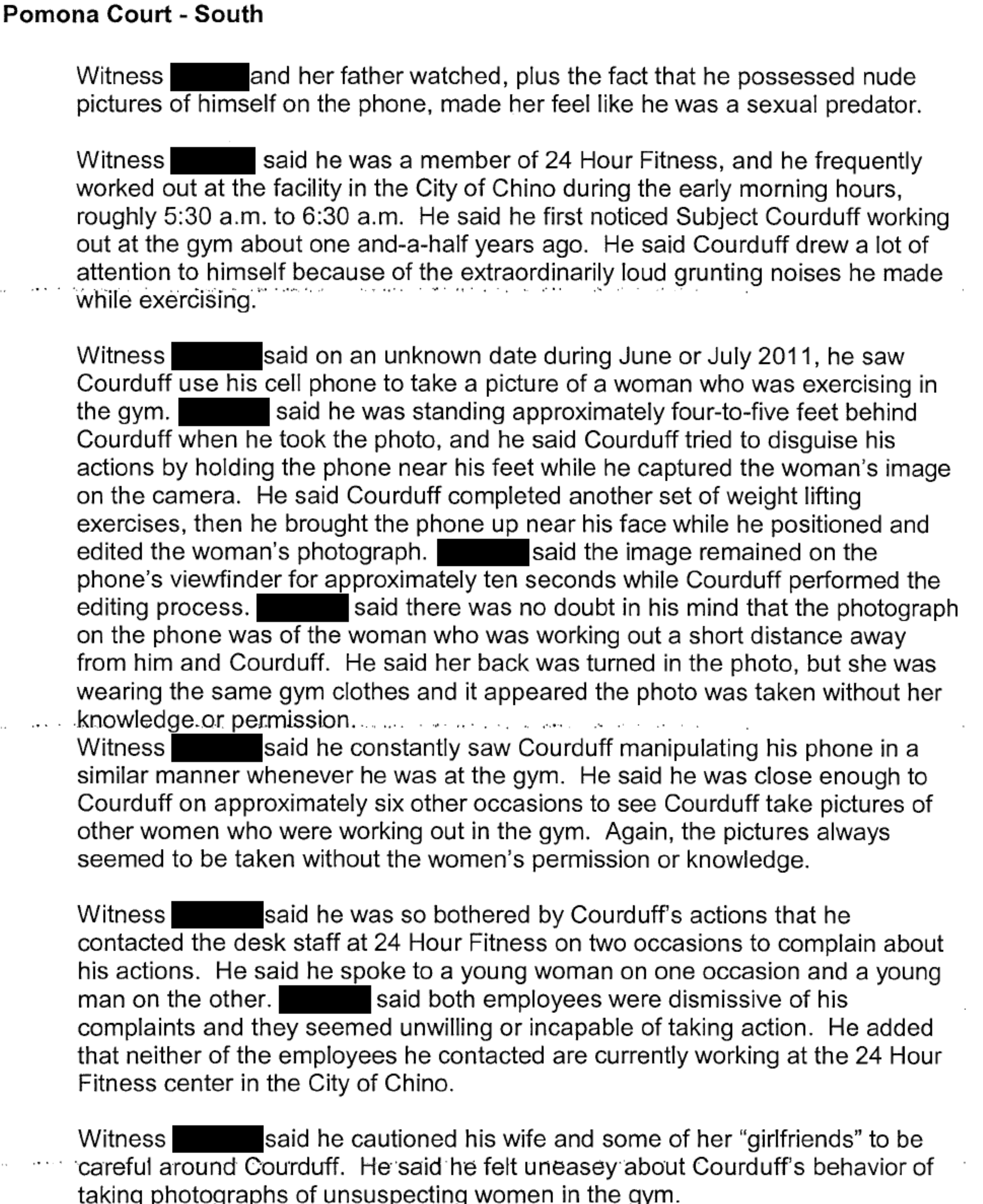
Courduff replied, "Of people. Sometimes I reverse the camera and take pictures of myself."

Courduff told [redacted] that he deleted photographs from his phone at the request of Witness [redacted] "and I've been going nonstop. I started deleting my family pictures and said, screw it."

Courduff described the manner in which he took the photographs to [redacted] as follows: "I didn't make it stealth. I sat there, I looked at my watch, I took a picture. He [redacted] said I was looking at my watch - I didn't have a watch on, it was on the ground. I showed him [redacted] each photo and I agreed with him it was inappropriate because there were people in the background."
Witness [redacted] said she was working out in the 24 Hour Fitness center in the City of Chino on January 17, 2012, when she heard [redacted] (Chino P.D.) having a loud discussion with Subject Courduff. She leaned the discussion was about Courduff taking photographs of her while she was working out in the gym. Witness [redacted] said she had seen Courduff in the gym on at least 100 previous occasions and he always kept to himself, "like a loner." She said she had never witnessed him using his phone to take photographs.

Witness [redacted] said her father (Witness [redacted] informed her that he saw images of her on Courduff's phone. She said her dad also saw photos on the phone of other unknown women who were working out in a gym. [redacted] said her father said he saw fully nude photographs of Courduff on the phone. He also told her that Courduff had deleted approximately 80 to 100 images from the phone before uniformed police officers arrived at the gym.

Lieutenant Nutt asked Witness [redacted] how she felt about Courduff after she learned he had taken photos of her. She said, "I felt violated. I knew my instinct was right on. His behavior was not normal and his demeanor around the gym - it just all came together." She added that his actions of deleting the photos while



Witness [redacted] and her father watched, plus the fact that he possessed nude pictures of himself on the phone, made her feel like he was a sexual predator.

Witness [redacted] said he was a member of 24 Hour Fitness, and he frequently worked out at the facility in the City of Chino during the early morning hours, roughly 5:30 a.m. to 6:30 a.m. He said he first noticed Subject Courduff working out at the gym about one and-a-half years ago. He said Courduff drew a lot of attention to himself because of the extraordinarily loud grunting noises he made while exercising.

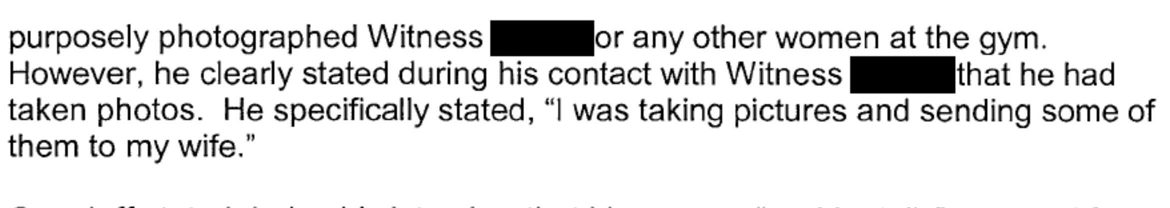
Witness [redacted] said on an unknown date during June or July 2011, he saw Courduff use his cell phone to take a picture of a woman who was exercising in the gym. [redacted] said he was standing approximately four-to-five feet behind Courduff when he took the photo, and he said Courduff tried to disguise his actions by holding the phone near his feet while he captured the woman's image on the camera. He said Courduff completed another set of weight lifting exercises, then he brought the phone up near his face while he positioned and edited the woman's photograph. [redacted] said the image remained on the phone's viewfinder for approximately ten seconds while Courduff performed the editing process. [redacted] said there was no doubt in his mind that the photograph on the phone was of the woman who was working out a short distance away from him and Courduff. He said her back was turned in the photo, but she was wearing the same gym clothes and it appeared the photo was taken without her knowledge or permission.

Witness [redacted] said he constantly saw Courduff manipulating his phone in a similar manner whenever he was at the gym. He said he was close enough to Courduff on approximately six other occasions to see Courduff take pictures of other women who were working out in the gym. Again, the pictures always seemed to be taken without the women's permission or knowledge.

Witness [redacted] said he was so bothered by Courduff's actions that he contacted the desk staff at 24 Hour Fitness on two occasions to complain about his actions. He said he spoke to a young woman on one occasion and a young man on the other. [redacted] said both employees were dismissive of his complaints and they seemed unwilling or incapable of taking action. He added that neither of the employees he contacted are currently working at the 24 Hour Fitness center in the City of Chino.

Witness [redacted] said he cautioned his wife and some of her "girlfriends" to be careful around Courduff. He said he felt uneasey about Courduff's behavior of taking photographs of unsuspecting women in the gym.

During his interview on March 22, 2012, Subject Courduff denied that he



purposely photographed Witness [redacted] or any other women at the gym. However, he clearly stated during his contact with Witness [redacted] that he had taken photos. He specifically stated, "I was taking pictures and sending some of them to my wife."

Courduff stated during his interview that his camera "accidentally" captured four images of Witness [redacted] on January 17th. However, he asserted the images were captured after he noticed his phone glowing on the floor and he picked it up to examine it. He noted that the phone was in "camera mode" and the photos were taken as he was trying to change the phone out of camera mode.

Again, the aforementioned assertion by Courduff is contradicted by the recording of his statements to Witness [redacted] Courduff stated on tape, "I didn't make it stealth. I sat there, I looked at my watch, I took a picture. He [redacted] said I was looking at my watch - I didn't have a watch on, it was on the ground. I showed him each photo and I agreed with him it was inappropriate because there were people in the background."

Subject Courduff denied that he refused to give his phone to Witness [redacted] after [redacted] asked to review the phone's photo library content. This assertion by Courduff is again refuted by the audio recording of his conversation with Witness [redacted]

Courduff also denied that he deleted more than the "four accidental" photographs of Witness [redacted] from his phone, which conflicts with the statements of Witnesses [redacted] and [redacted] The witnesses, independent of each other, said they saw Courduff delete between 70 and 100 photographs of women from his phone while they stood next to him and watched. Courduff was heard on tape saying that he started deleting photos from his phone and he had been going nonstop until [redacted] arrived on scene to conduct his investigation.

[redacted]

Assessment of Mitigating and Aggravating Factors, Severity of Infractions:

The Peace Officers' Association of the State of California adopted the Law Enforcement Code of Ethics in 1956 to maintain public trust. Part of the Code states,..."I will keep my private life unsullied as an example to all"... Additionally, the Code states, "....I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service." The Sheriff's Department's Core Values requires its members to have...."Integrity to do right and fight wrongs".... Subject Courduff's actions of surreptitiously photographing women at the gym violated the aforementioned principles. Furthermore, his behavior left a woman whom he photographed ([redacted] feeling "violated." Still others, including tenured law enforcement officers, were left with the impression that he was a sexual predator.

There can be little doubt Courduff was consciously aware that his decision to snap photos of Witness [redacted] in a gym setting without her knowledge could be upsetting and offensive to others if discovered. As such, he made overt efforts to disguise his actions when he knelt on one knee and loudly stated, "My watch is broken, my watch is broken," as reported by Witness [redacted] At the same moment, he extended his right hand toward Ms. [redacted] who was just feet away from him, and repeatedly snapped her photo.

Another aggravating factor in this investigation is the fact Witness [redacted] said he saw Subject Courduff behave similarly in June or July of 2011. [redacted] said he saw Courduff surreptitiously photograph a woman at the same gym. Witness [redacted] described Courduff as behaving "sneakily" while taking and editing the photographs.

Witness [redacted] said he felt uneasy about Courduff's actions, and he believed it was necessary to warn his wife and her girlfriends about Courduff's behavior. He encouraged them to use caution if they found themselves around Courduff.

A mitigating factor in this investigation is the fact Subject Courduff did not use Sheriff's Department communications equipment to access State, Federal or local database information to perform unauthorized searches for information. The audit, which covered the months of December 2011 and January 2012, was conducted of Pomona Court South's JDIC terminals by personnel assigned to Data Systems Bureau. Subject Courduff's department internet usage was also reviewed and it did not reveal any improper conduct **(miscellaneous documents)**.

Intent, Truthfulness and Acceptance of Responsibility:

It does not appear that Subject Courduff made truthful statements during his subject interview about his conduct in this matter. There can be little doubt that he intended to take pictures of Witness [redacted] based on the credible statements of Witnesses [redacted] and [redacted] Additionally, Witness [redacted] provided supporting information about Courduff's actions on other occasions that mimicked the behavior witnessed and reported by [redacted] and [redacted]

Note: Subject Courduff and his attorney were provided with copies of Witnesses [redacted], [redacted] and [redacted] typed interviews prior to Courduff's subject interview. They met privately, reviewed and discussed the information until such time that they were comfortable with starting the interview.

A further aggravating factor for consideration in this investigation is Courduff's denial that he intentionally took photographs at the gym or that he apologized to anyone for his behavior. Witness [redacted] contact with Subject Courduff was recorded on his departmentally issued digital recorder **(Exhibit D)**. The recording captured Courduff telling [redacted] that he had taken photographs of people and gym equipment to show his wife, and someone working out in the gym may have been captured in the images. He can also be heard apologizing for his actions and stating that he knew it was wrong to take the photographs.

During his subject interview Courduff adamantly denied that he intentionally took photographs of Ms. [redacted] or anyone else at the gym. He said he finished a set of repetitions on a leg exercise machine and he knelt down to look at his watch. He said he noticed his phone was "glowing", so he picked up the phone to shut it off. Courduff said he noticed the phone was in camera mode, but he did not "purposely" take photos of anyone in the gym. Once again, these assertions by Courduff are contradicted by the recording of his statements to Officer [redacted]

Degree of Culpability:

Subject Courduff is solely responsible for his actions in this matter. He made the conscious decision to take photographs of women without their permission, and he did so in a surreptitious manner. He also made the decision to make untruthful statements during his subject interview.

Past Performance and Disciplinary History:

Subject Courduff has been employed as a deputy sheriff since August 31, 1983. [redacted]



Leroy D. Baca, Sheriff

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



August 30, 2012

Deputy Christopher Courduff, #[redacted]

Dear Deputy Courduff:

You are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of twenty (20) days.

An investigation under IAB File Number IV2305962, conducted by Court Services East Bureau, coupled with your own statements, has established the following:

1. That in violation of the Manual of Policy and Procedures Section(s) 3-01/030.05 General Behavior; and/or 3-01/030.07 Immoral Conduct, on or about January 17, 2012, while off duty, you were detained by an off-duty city of Chino Hills police officer at the 24 Hour Fitness Center for taking several surreptitious photographs with your phone of an unsuspecting female ([redacted]) exercising in the gym. You were detained and was observed deleting several photographs from your phone. Your actions have brought discredit and embarrassment upon yourself and the Los Angeles County Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Investigations, on or about March 22, 2012, you knowingly made false and/or misleading statements regarding your actions of taking surreptitious photographs of women at the 24 Hour Fitness and/or the surrounding circumstances regarding the incident, as evidenced by but not limited to:

a. Making false statements about your actions of deleting photographs from your phone.

Additional facts and grounds for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of the incident has been made by Department executives, including your Unit and Division Commanders.

You have the right to grieve this disciplinary action within ten (10) business days of receipt of this letter. Your grievance procedures may be found in your classification's negotiated Memorandum of Understanding.

Failure to respond to this Letter of Intent within ten (10) business days will be considered a waiver of your right to grieve and will result in the imposition of this discipline indicated herein.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Anselmo C. Gonzalez, Captain
Commander, Court Services East Bureau

ACG:JHC:md

cc: Advocacy
Employee Relations Unit
Richard J. Barrantes, Chief, Court Services Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File # IAB 2305962)





CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

April 16, 2014

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of **CHRIS COURDUFF** for a hearing on his twenty (20) day **suspension**, effective December 3, 2012, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 12-395**.

The Civil Service Commission, at its meeting held on April 9, 2014 approved findings in the above-entitled case. The petitioner's objections were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

Enclosure

c: Chris Courduff
Dale Nowicki
Vincent McGowan
Ernest Gould

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the twenty (20) day **suspension**, effective December 3, 2012, from the position of Deputy Sheriff, Sheriff's Department, of **CHRIS COURDUFF** **(Case No. 12-395)**	ORDER OF THE CIVIL SERVICE COMMISSION

On April 9, 2014, the Civil Service Commission of the County of Los Angeles overruled the petitioner's objections and adopted as its final decision the findings and recommendation of the Hearing Officer, Ernest Gould, to sustain the Department.

Dated this 16th day of April, 2014.

EVELYN V. MARTINEZ, President

JOHN DONNER, Member

VANGE FELTON, Member

CAROL FOX, Member

Z. GREG KAHWAJIAN, Member

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CIVIL SERVICE COMMISSION

In the Matter of the Twenty Day Suspension of CHRISTOPHER COURDUFF, Appellant/Employee v. COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT Respondent/Employer	Civil Service Case No. 12-395 **HEARING OFFICER'S REPORT (On Remand)** **Findings of Fact, Conclusions of Law, and Recommendations**

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INTRODUCTION

On remand from the Civil Service Commission, the previous Report dated August 28, 2013 is hereby withdrawn, and the following substituted in its place.

By a letter dated November 30, 2012, Chris Courduff (hereinafter the "Appellant") was notified that he had been suspended without pay from his position as Deputy Sheriff with the Sheriff's Department (hereinafter the "Department" or "Respondent"). The suspension was effective December 3 through December 26, 2012.

Pursuant to a timely Notice of Appeal, a Hearing was held in this matter on July 9, 2013.

The Department was represented by Vincent C. McGowan, Esq., of the law firm of Houseman & Sosa. The Appellant was represented by Erika T. Gurrola, Esq., of the law firm of Green & Shinee.

At the conclusion of the Hearing, the Appellant's counsel submitted additional exhibits for the record, pursuant to a Stipulation of the parties. The parties thereafter submitted written Closing Arguments, and the record was closed.

ISSUES

The issues as defined by the Civil Service Commission are as follows:

1. Are the allegations contained in the Department's letter of December 31, 2009, true?
2. If any or all of the allegations are true, is the discipline appropriate?

STATEMENT AND BACKGROUND OF THE CASE

In January of 2012, and thereafter, Appellant served as a Deputy Sheriff.

In a Letter of Intent dated August 30, 2012, Appellant was notified that it was the intention of the Sheriff's Department to suspend him without pay for a period of 20 days. This

was as a result of Appellant having been detained by an off-duty police officer from another jurisdiction at a gym, after being observed taking surreptitious photographs on his phone of an unsuspecting female exercising at the gym. Appellant was detained and was observed deleting several photographs from his phone/camera, and charged with a violation of Department rules regarding "General Behavior" and "Immoral Conduct." It was alleged that Appellant's actions brought discredit and embarrassment upon himself and the Department.

Appellant was also charged with knowingly making false and/or misleading statements regarding his actions in taking the surreptitious photographs, during a Departmental investigation of the incident, and specifically making false statements about his actions of deleting photographs from his phone.

Appellant was served with the Notice of Intent dated August 30, 2012, stating that it was the Department's intention to suspend Appellant for 20 days. No time period for the suspension was stated.

The Letter of Intent did, however, notify Appellant that he had 10 business days from the receipt of this August 30, 2012 letter in which to grieve this disciplinary action.

He was further advised that failure to respond to the Letter of Intent within 10 business days would be considered a waiver of his right to grieve and would "...result in the imposition of this discipline indicated herein."

Within the 10 day time period allotted, Appellant did waive the right to grieve this discipline.

Thereafter, and on November 30, 2012, Appellant was served with a Letter of Imposition (the "Suspension Letter", sometimes called "Letter of Charge") of the same date actually imposing a 20-day suspension effective December 3 through December 22, 2012, based upon the same charges that had been set forth in the Notice of Intent letter of August 30, 2012.

Prior to the issuance of the final Notice of Suspension letter on November 30, however, a Captain, Anselmo Gonzalez (who was one of Appellant's supervisors), conferred with Appellant with regard to the possibility of reducing the 20-day suspension by participating in Education Based Discipline (EBD) whereby Appellant could participate in certain training and

thereby reduce the number of unpaid suspension days.

The Captain actually rewrote the Letter of Imposition to substitute 10 days of EBD instead of 10 unpaid suspension days.

Gonzalez actually sent a memo to the decision-maker in this case, Richard A. Barrantes, who was the Chief of the Court Services Division in which both Appellant and Captain Gonzalez served. The memo recommended substituting EBD for unpaid suspension days.

Chief Barrantes, however, declined to accept Gonzalez's suggestion regarding EBD, and instead issued the final Letter of Imposition dated November 30, 2012, which imposed a 20-day suspension to be served from December 3 through December 22, 2012.

The Department asserted that discussions were still continuing into November as to what discipline would be imposed, and that Chief Barrantes only made his final decision in November as memorialized in the Letter of Imposition on November 30.

In a written joint stipulation between the parties, it was stipulated that Appellant does not oppose or contest the facts or the discipline in this case on their merits.

SUMMARY OF EVIDENCE

The first and only witness for the Appellant was the **Appellant** himself, who testified as follows:

He has been a deputy sheriff for 29 years and presently serves at the Pomona courthouse.

He identified Appellant's Exhibit B, page 2, as his e-mail to Captain Gonzalez dated September 7, stating that Appellant would not grieve the discipline in this matter.

On cross-examination, Appellant testified that he got a Letter of Intent on August 30, 2012.

He thought the letter meant that he would definitely be suspended.

He met with Captain Gonzalez but can't recall the date. It was approximately two months after the Letter of Intent. Gonzalez gave him a letter which he handed back.

Later, Gonzalez asked him to sign the suspension letter on November 30, 2012.

Appellant later served his suspension.

Appellant identified the Department's Exhibit 15 and testified that the first paragraph of that memo relating his meeting with Captain Gonzalez, was accurate.

Appellant also testified that he does not recall being told that the August 30 letter was only an "intention" and not a final decision on discipline.

After Appellant's testimony, the Appellant rested.

The first and only witness for the Department was **Chief Richard Barrantes**, who testified as follows:

He has served for 39 years in the Sheriff's Department, and for the last six years has been the Division Chief of the Court Services Division.

With regard to discipline, he is the decision-maker in his Division.

In Appellant's present case, Chief Barrantes' initially recommended discipline and also made the final decision in the case.

Captain Gonzalez is the Captain of the East Bureau (which includes Pomona). Gonzalez investigated this incident and it went to Internal Affairs and then back to Barrantes after the investigation. Barrantes makes the final decision with regard to suspensions of 15 days or more.

He identified the Department's Exhibit 1 as the Letter of Intent, giving the Appellant notice of an intent to impose discipline. That was not the final decision.

Only the Letter of Imposition is the final decision. That's the Department's Exhibit 2 dated November 30, 2012, and states the actual suspension dates.

Prior to that time, he learned that Appellant spoke to Captain Gonzalez with regard to Education Based Discipline (EBD), and Barrantes received the Exhibit 15 memo from Captain Gonzalez regarding EBD. Notwithstanding that memo, Barrantes imposed a 20-day suspension without regard to any EBD. Exhibit 15 is dated November 28, 2012.

The fact that the Appellant decided not to grieve the proposed suspension did not mean that the discipline was final.

Barrantes also testified that he did not decide the final decision within 10 or even 20 days

of August 30, 2012 (the date of the Notice of Intent letter).

On cross-examination, Barrantes testified that Exhibit 3 is the first page of a Disposition Sheet dated July 17, 2012. Such a Disposition Sheet goes to three commanders for their review and signatures. In the meantime, this tentative decision could be grieved, or informal discussion could change the ultimate result.

It is true that the Department's Exhibit 1, page 2 (the Letter of Intent) says that a waiver of the right to grieve will result in imposition. A failure to respond, however, does not result in imposition until there is a Letter of Imposition. The Appellant and Captain Gonzalez were still discussing EBD.

Captain Gonzalez spoke to him (Barrantes) only later in November with regard to the status of this matter.

He had no contact with Captain Gonzalez regarding this case prior to November 19. This was not unusual. Discussions can still be preceding, and Gonzalez told Barrantes prior to November 28 that he (Gonzalez) was discussing the possibility of EBD with the Appellant.

He knows that Gonzalez offered EBD to the Appellant, but knows of no written offer.

On re-direct, Chief Barrantes also testified that he has the authority to change the discipline between the time of the Letter of Intent and the Letter of Imposition, even if the employee decides not to grieve.

A captain could recommend reducing a penalty. For example, in this case, Gonzalez suggested EBD but Barrantes disagreed and wrote the ultimate Letter of Imposition for a 20-day suspension without any EBD. Barrantes had the authority to change that if he had wanted to.

Captain Gonzalez's EBD "suggestion" is incorporated in Department's Exhibit 15, the first paragraph of which states:

> "On November 19, 2012, I met with Deputy Christopher Courduff at Pomona South Court for the purpose of serving a Letter of Imposition for a twenty day suspension resulting from a founded administrative investigation. During that contact I inquired as to why he had not exercised his right to grieve the intended discipline. Deputy Courduff

responded by stating, 'I did not want to make the situation worse.' I told him that since his incident had gone to Executive Case Review the disciple [sic] was presented to him without benefit of Education Based Discipline having been incorporated. I asked him if he was at all interested in participating in EBD in an effort to reduce the total overall financial impact of the intended twenty day suspension. He said yes, but was apprehensive because he was being told by his association that there was a problem with the service of this action."

Appellant confirmed the accuracy of the subparagraph quoted immediately above.

DISCUSSION

Normally, the Department, as the moving party, has the burden of proving its charges or allegations by a preponderance of the evidence.

"Preponderance" of the evidence has been defined as 51% or more in favor of the establishment of a particular fact or position. It is a balancing task, of sorts. In addition to ***quantity*** of evidence, however, the legal concept of "preponderance" of the evidence also takes into account the ***quality*** of evidence offered.

To the extent that the Appellant raises new matters or affirmative defenses in response to charges, the Appellant has the burden of proof with respect to such affirmative defenses.

This matter is somewhat unusual in that the Appellant has stipulated that he is not contesting or disputing the charges in the case.

The 20-day suspension was warranted and appropriate under the facts and stipulations in this case.

FINDINGS OF FACT

1. Appellant has served as a Deputy Sheriff for the County of Los Angeles for approximately

29 years, and continuing at the present time.

2. Charge One arises out of an incident on or about January 17, 2012.

3. On or about January 17, 2012, while off-duty, Appellant was detained by an off-duty Chino Hills police officer at a 24-Hour Fitness Center for taking several photographs surreptitiously with a cell phone, of an unsuspecting female exercising in the gym. Appellant was detained and observed deleting several photographs from his cell phone.

4. Charge Two herein arises out of Appellant making false statements during a Departmental investigation on or about March 22, 2012, when Appellant knowingly made false and/or misleading statements regarding his actions in taking photographs surreptitiously of women exercising in a gym on or about January 17, 2012, including, but not limited to, making false statements about his actions in deleting photographs from his cell phone.

5. On August 30, 2012, Appellant received a Letter of Intent notifying him that it was the intention of the Department to suspend him without pay for a period of 20 days, as a result of the facts set forth in Charges One and Two herein. No time period for the suspension itself was stated.

6. The aforesaid Letter of Intent did notify Appellant that he had 10 business days from August 30 in which to grieve this disciplinary action.

7. He was further advised in the Letter of Intent that failure to respond to it within 10 business days would be considered a waiver of his right to grieve and would "...result in the imposition of this discipline indicated herein."

8. Appellant did respond and waived the right to grieve this discipline within the 10 day period.

9. On November 30, 2012, Appellant was served with a Letter of Imposition (the Suspension Letter) imposing a 20-day suspension effective December 3 through December 22, 2012, and based upon the same charges that had been set forth in the Letter of Intent.

10. Prior to the issuance of the final Notice of Suspension, a Captain conferred with Appellant and discussed the possibility of reducing part of the 20-day suspension by participating instead in Education Based Discipline (EBD), consisting of additional training which would reduce the

number of unpaid suspension days.

11. The Captain re-wrote the Letter of Imposition to substitute 10 days of EBD instead of 10 unpaid suspension days, and recommended this change to the Decision-Maker, Chief Richard A. Barrantes, in a memo dated November 28, 2012.

12. Chief Barrantes rejected Gonzalez's recommendation and instead issued a final Letter of Imposition dated November 30, 2012, imposing a 20-day suspension to be served from December 3 to December 22, 2012.

CONCLUSIONS OF LAW

1. Appellant does not contest or dispute the allegations in Charges One and Two herein, and having so stipulated, issues surrounding Charges One and Two are not being appealed.

2. Appellant does not dispute or contest the allegations of Charges One and Two, and they are therefore found to have been established by a preponderance of the evidence.

3. By reason of the established allegations of Charges One and Two, Appellant has brought discredit and embarrassment upon himself and the Respondent, Los Angeles County Sheriff's Department.

4. That the conduct alleged in Charge One constitutes a violation of the Department's Manual of Policy and Procedures, Sections 3-01/030.05 (General Behavior), and 3-01/030.07 (Immoral Conduct).

5. That in knowingly making false and misleading statements as alleged in Charge 2, Appellant violated the Department's Manual of Policy and Procedures Section 3-01/040.75 (Making False Statements).

6. The Department's Letter of Intent dated August 30, 2012 did not constitute notice to Appellant of the Department's final decision with regard to imposing discipline in this matter. As its name indicates, that Letter was merely giving notice of an "intention" to discipline but not a final decision.

7. Captain Gonzalez's memo (Department's Exhibit 15) dated November 28, 2012, to Chief

Barrantes regarding EBD, was heresay, but was corroborated by Appellant's own testimony at this Hearing.

8. Since it was corroborated by direct evidence, the November 28, 2012 memo (together with Chief Barrantes' testimony) establishes that a final decision on the discipline to be imposed on the Appellant was not made until late November, 2012.

9. By reason of Appellant's stipulation herein, the two charges which are the subject of the case are deemed established by a preponderance of the evidence, and the 20-day suspension is deemed an appropriate level of discipline therefore.

RECOMMENDATION

This duly appointed Hearing Officer recommends that Appellant's appeal be denied.

DATED: October 23, 2013

Respectfully submitted,

ERNEST S. GOULD
Hearing Officer



County of Los Angeles
Sheriff's Department Headquarters

4700 Ramona Boulevard
Monterey Park, California 91754-2169



November 30, 2012

Deputy Christopher Courduff, [redacted]

Dear Deputy Courduff:

On August 30, 2012, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number 2305962. You were also advised of your right to review the material on which the discipline was based.

You did not exercise your right to respond. The grievance period involved has now elapsed, with no change in discipline.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of twenty (20) days effective December 3, 2012, through December 22, 2012.

An investigation under File Number IAB 2305962, conducted by Court Services East Bureau, coupled with your own statements, has established the following:

1. [redacted], on or about January 17, 2012, while off duty, you were detained by an off-duty city of Chino Hills police officer at the 24 Hour Fitness Center for taking several surreptitious photographs with your phone of an unsuspecting female [redacted] exercising in the gym. You were detained and was observed deleting several photographs from your phone. Your actions have brought discredit and embarrassment upon yourself and the Los Angeles County Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Investigations, on or about March 22, 2012, you knowingly made false and/or misleading statements regarding your actions of taking surreptitious photographs of women at the 24 Hour Fitness and/or the surrounding circumstances regarding the incident, as evidenced by but not limited to:

   a. Making false statements about your actions of deleting photographs from your phone.

Additional facts and grounds for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Anselmo C. Gonzalez, Captain
Commander, Court Services East Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.